

APPEAL FROM ORDER No 7 of 1999

Hon'ble MR.JUSTICE A.R.DAVE

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5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5: No

[illegible]

Versus

BANK OF BARODA

MR MC SHAH for MR MB PARIKH for Petitioners

MR RD DAVE for Respondent No. 1

Date of decision: 20/09/1999

Admit. Learned Advocate Shri Rajesh Dave waives service of notice for the opponent. With consent of the learned advocates the appeal is finally heard today.

2. In this appeal the appellants-defendants have challenged validity of the order dated 7.12.98 passed on an application below Exh. 5 in Special Civil Suit No. 77/98 filed in the court of Civil Judge (S.D.) at Amreli. By virtue of the said order, the properties belonging to the appellants described in para 4(1) of the application below Exh. 5 have been directed to be attached.

3. It has been submitted by learned advocate Mr. M.C. Shah appearing for the appellants that the impugned order is illegal for the reason that the learned Judge has not come to a specific conclusion that the conditions which were necessary for attaching the properties in question had been complied with. It has been further submitted that upon perusal of the reasons stated in the said order, it is clear that nowhere the learned Judge has discussed the ingredients necessary for grant of an order for attachment under Order 38 Rule 5.

4. Upon perusal of the said order and after hearing learned advocate Shri R.D. Dave appearing for the opponent plaintiff-bank, there appears to be substance in the submission of learned advocate Shri M.C. Shah. Sufficient case has not been made out for attachment as provided in Order 38 Rule 5 in the application filed below Exh. 5. In the circumstances, prima facie, it appears that the impugned order is not proper. Learned Advocate Shri Shah has also relied on a judgment delivered in case of Onkar Lal Mittal and anr v. State Bank of Patiala and others, AIR 1992 Punjab & Haryana 104 which clearly reveals that looking to the facts of the case the impugned order is not only improper but is also a void order.

5. In the circumstances, the appeal requires to be allowed and looking to the peculiar facts of the case it would be just and proper to direct the trial court to expedite hearing of the suit. The learned advocates have assured this court that the litigants before the trial court shall extend their co-operation to the trial court so that the trial can be concluded as soon as possible. It is hoped that the trial is concluded preferably before 30.6.2000.

6. Looking to the facts of the case it would also be just and proper to see that the appellants are prevented from disposing of the immovable properties referred to in para 4(1) of the application below Exh. 5. The appellants are therefore restrained from parting with possession of the said properties or from transferring or alienating in any manner the properties which have been

described in the said para during pendency of the trial.

7. It would be open to the respondent-plaintiff to file another appropriate application for attachment if some further material is available with the bank and in that event I am sure the trial court will decide the said application in accordance with law and on the basis of the material placed before it. Needless to say that the observations made here are tentative and the trial court shall not be influenced by the said observations while deciding a fresh application, if any, which may be filed by the opponent bank under Order 38 rule 5 of the CPC.

The appeal is thus allowed with no order as to costs.

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